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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 655

C. H. ACKER, DOING BUSINESS AS C. H. ACKER & COMPANY ET AL.,

Appellants,

vs.

UNITED STATES OF AMERICA, HENRY A. WALLACE, SECRETARY OF AGRICULTURE ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

GEORGE I. HAIGHT,
JOHN S. BOYD,
M. K. HOBBS,
Counsel for Appellants,

INDEX.

SUBJECT INDEX.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
Date of the decree sought to be reviewed and date of application for appeal	3
Nature of the case and rulings below	3
Cases believed to sustain the jurisdiction	4

TABLE OF CASES CITED.

Stafford v. Wallace, 258 U. S. 495, 66 L. Ed. 735	4
Tagg Bros. & Moorhead v. United States, 280 U. S. 420, 74 L. Ed. 524	4
West Ohio Gas Co. v. Public Utilities Commission of Ohio, 79 L. Ed. 274 (decided January 7, 1935)	4

STATUTES CITED.

Constitution of the United States, Fifth Amendment	4
Packers and Stockyards Act, 1921 (Title 7, U. S. Code, Chap. 9, Sections 181-229; Chap. 64, 42 Stat. 159 et seq.)	2
United States Code, Title 28, Section 47 (Judicial Code, Section 24 g, Oct. 22, 1913, c. 32, 38 Stat. 220)	2
United States Code, Title 28, Section 345 (Judicial Code, Section 238, amended)	3

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN EQUITY

No. 13,829

C. H. ACKER, DOING BUSINESS AS C. H. ACKER & COMPANY ET AL.,
Petitioners, Plaintiffs and Appellants,

vs.

UNITED STATES OF AMERICA, HENRY A. WALLACE, SECRETARY OF AGRICULTURE ET AL.,
Respondents, Defendants and Appellees.

STATEMENT OF APPELLANTS PURSUANT TO THE PROVISIONS OF RULE 12 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES SHOWING THAT THAT COURT HAS JURISDICTION TO REVIEW UPON APPEAL THE FINAL JUDGMENT OR DECREE OF THE DISTRICT COURT.

I.

The suit arose to suspend and restrain the enforcement, operation and execution of Orders of the Secretary of Agriculture dated January 8, 1934 and March 12, 1934 entered

in a proceeding entitled "Secretary of Agriculture *vs.* C. H. Acker, doing business as C. H. Acker & Company *et al.*," Bureau of Animal Industry, Docket 402, instituted under Packers and Stockyards Act, 1921 (Title 7, U. S. Code, Chap. 9, Sections 181-229; Chap. 64, 42 Stat. 159 *et seq*). Section 316 of that Act (Title 7, U. S. Code, Section 217) provides:

> "217. *Proceedings for suspension of orders.* For the purposes of sections 201 to 217 inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of sections 201 to 217, inclusive of this chapter. (Aug. 15, 1921, c. 64, Sec. 316, 42 Stat. 168)."

The applicable provisions of the laws relating to the suspending or restraining the enforcement of orders of the Interstate Commerce Commission, made by the statute quoted also applicable to suspending or restraining the enforcement of Orders of the Secretary of Agriculture under Packers and Stockyards Act, 1921, are found in Title 28, U. S. Code, Section 47 (Judicial Code Section 24 g, Oct. 22, 1913 c. 32, 38 Stat. 220). This Act provides for a hearing by a three-judge court upon an application for an interlocutory injunction to sustain or restrain the enforcement of Orders of the Secretary of Agriculture under Packers and Stockyards Act, 1921; and further provides:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction * * *."

The Section further provides:

"and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission, the same requirement as to judges and the same procedure as to exception and appeal shall apply."

Section 345, Title 28 U. S. Code (Judicial Code Section 238 amended) provides that the Supreme Court has appellate jurisdiction to review the final decree of a District Court as provided in Section 47 of Title 28, referred to and quoted from above.

II.

The constitutionality of the provisions of Packers and Stockyards Act, 1921, is not involved.

III.

The date of the final decree or order sought to be reviewed is March 19, 1935; and the date upon which the application for appeal is presented is April 18, 1935.

IV.

Under the provisions of Packers and Stockyards Act, the Secretary of Agriculture has the power to determine and prescribe what shall be just and reasonable rates or charges made by market agencies, defined in the Act to be any person engaged in the business of buying or selling in commerce, live stock at a stockyard on a commission basis or furnishing stockyard services. The appellants are market agencies at the Chicago Union Stockyards. After hearing in Bureau of Animal Industries No. 402, the Secretary of Agriculture prescribed rates and charges in his Orders of January 8, 1934, and March 12, 1934. On April 19, 1934, the District Court entered an interlocutory injunction re-

straining the enforcement of said Orders. Upon final hearing the appeal was dismissed. The appellants pray for reversal on the grounds, generally, that the findings of the Secretary of Agriculture and of the District Court rest upon erroneous rules of law, were made without evidence or upon evidence which clearly does not support them, deprive the appellants and each of them of their property without due process of law under the Fifth Amendment to the Constitution of the United States, substitute the judgment of the court and of the Secretary of Agriculture for the judgment and prudent management of the appellants without any showing of inefficiency or improvidence (*West Ohio Gas Co.* v. *Public Utilities Commission of Ohio*, — Supreme Court —, 79 L. Ed. Advance Sheets 274, decided January 7, 1935), and are arbitrary, unjust and unreasonable.

V.

The cases believed to sustain the jurisdiction of the Supreme Court of the United States are *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, 74 L. Ed. 524; and *Stafford* v. *Wallace*, 258 U. S. 495, 512, 66 L. Ed. 735, 740.

Respectfully submitted,

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(7255-C)